Filed 8/1/16 In re S.M. CA1/5

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

In re S.M., a Person Coming Under the Juvenile Court Law.	
SOLANO COUNTY DEPARTMENT OF HEALTH AND SOCIAL SERVICES, Plaintiff and Respondent, v. S.J., ET AL., Defendants and Appellants.	A145883 (Solano County Super. Ct. No. J42210)

S.J. (mother) and J.M. (father) appeal from the juvenile court's orders terminating their parental rights (Welf. & Inst. Code, § 366.26) and denying their petitions to change a prior order terminating reunification services (§ 388).[1] Father contends that notice was not properly given under the Indian Child Welfare Act of 1978 (ICWA, 25 U.S.C. 1901 et seq.) because the notices were addressed to the tribes' "ICWA Representative" or "ICWA Program Director of Social Services," rather than to individuals identified in the Federal Register. Both parents contend their section 388 petitions should have been granted because they engaged in counseling and programs after reunification services had been terminated and a section 366.26 hearing had been set, and because they had a bond with the minor, S.M. We will affirm.

[1] Except where otherwise indicated, all statutory references are to the Welfare and Institutions Code.

I. FACTS AND PROCEDURAL HISTORY

S.M. (minor) was born in March 2012. In February 2013, the San Joaquin County Human Services Agency received a referral reporting that father and mother, then pregnant with the minor's sibling (L.M.), engaged in a physical altercation while mother held the minor in her arms. Father had been drinking.

In March 2013, mother gave birth to L.M. Mother, father, and the children moved to San Diego. When L.M. was about two months old, she died while sleeping on a pillow on the floor next to the parents. Mother, father, and S.M. moved to Los Angeles County.

The Los Angeles Department of Child and Family Services filed a section 300 petition and detention report with respect to S.M. in May 2013. S.M. was removed from her parents' care and placed with her maternal grandmother's family. At the time of detention, father was in jail and mother was homeless. A jurisdiction and detention report recommended reunification services for both parents.

A. Jurisdiction and Transfer to Solano County

In September 2013, the juvenile court sustained the petition's allegations under section 300, subdivisions (b) and (j), finding that mother and father had placed S.M.'s sibling (L.M.) in an "endangering situation" and S.M. was at risk; mother and father had a history of violent altercations in S.M.'s presence and mother failed to protect S.M. by allowing father to reside in the home; and father had a history of alcohol abuse that rendered him incapable of providing regular care for S.M.

The juvenile court ordered that the case be transferred to Solano County based on S.M.'s residence there with the maternal grandmother. The Solano County juvenile court accepted the transfer.

B. Department's Addendum Report

After the transfer, in December 2013, respondent Solano County Health and Social Services Department (Department) filed an addendum to the jurisdiction and disposition report filed previously by its Los Angeles counterpart. The Department recommended that the parents continue to receive reunification services. It noted, however, that the parents had a violent relationship, which recently escalated, and they

had extreme difficulty assessing risks and safety for their children. Mother participated in a one-day class on empowering relationships in September 2013 but declined further services from the provider. She attended sessions of a domestic violence group with the Women's Center for Youth and Family Services (Women's Center), but there was nonetheless an additional incident of violence between the parents. In addition, mother was not attending visits with S.M. consistently, and her visits indicated "no connection" with the minor and did not last long. As to father, although it was recommended that he participate in a 72-session outpatient program with random drug testing and Narcotics Anonymous (NA) or Alcoholics Anonymous (AA) meetings three times a week, he had not begun those programs.

C. ICWA Notice

Because mother had previously indicated she might have Indian heritage, the Department conducted an investigation. In November 2013, the Department filed an ICWA-30 form indicating it had sent notice of the proceeding on November 6, 2013, to the Sacramento Area Director of the Bureau of Indian Affairs (BIA), the ICWA Coordinator of the Blackfeet Tribe, the ICWA Representative of the Colorado River Tribal Council, the ICWA Program Director of Social Services of the Hoopa Valley Tribe, and the ICWA Representative of the Hopi Tribal Counsel.

On January 13, 2014, the Department filed ICWA compliance documents with the court, including return receipts for the notices sent to the BIA and to the tribes. Receipts from the BIA, the Colorado River Tribal Council, the Hoopa Valley Tribe, and the Hopi Tribal Council were dated November 18, 2013; the Blackfeet Tribe's receipt was dated November 19, 2013; and another Hopi Tribal Council's receipt was dated November 21, 2013. The Department later received an acknowledgment letter from the BIA and filed it with the court on January 21, 2014.[2]

[2] In July 2014, the Department advised the court that six months had passed since the ICWA notices and no response had been received from the tribes.

D. Contested Disposition Hearing

A contested disposition hearing was held on January 27, 2014.

1. Social Worker's Testimony

Social worker Wendy Smith testified that mother had moved to San Joaquin County in late November 2013. Smith visited her residence and became concerned when she observed jugs of wine under the kitchen sink and in the refrigerator. She also had concerns about mother's continued contact with father in light of an existing stay-away order. The parents' unwillingness to be forthcoming about their contact increased the risk of harm to S.M. because it interfered with the Department's ability to create a safety plan for the family.

Although mother had participated in some domestic violence services while living in Solano County, she did not participate after she moved back to San Joaquin County. In fact, mother did not believe she needed any further domestic violence education or services. Father had started parenting and domestic violence services, but his frequent changes of residence limited his participation. As for substance abuse services, father had only completed an initial assessment.

Since the filing of the Department's addendum report in December 2013, the parents had missed approximately five out of ten supervised visits. Since the transfer of the case to Solano County, mother had failed to show up for approximately eight of the 20 supervised visits she was offered.

2. Testimony of Maternal Grandmother

The maternal grandmother testified that mother was not interacting much with S.M. during visits. She disagreed with mother's decision to move from Solano County to San Joaquin County, because of its negative effect on reunification.

3. Disposition Orders

The juvenile court declared S.M. a dependent pursuant to section 300, subdivisions (b) and (j), and found there were no reasonable means to protect her without removal from her parents' care. Father and mother were to participate in reunification services and have supervised visits with S.M. once a week for four to six hours a week.

The court expressed concern about the parents' continued contact and mother's belief that she did not need any further help with respect to domestic violence, noting that the domestic violence was so serious that father had been ordered to complete a year of domestic violence counseling.

Mother's case plan required her to complete parenting education; participate in counseling; develop a domestic violence relapse plan; articulate how violence impacted the safety of her children; communicate and show ways to ensure S.M.'s safety; establish safe, appropriate, and stable housing; abide by the active restraining order; and participate in substance abuse testing.

Father's case plan required him to participate in a domestic violence treatment program every week; articulate how domestic violence has impacted the safety of his children; show an ability to ensure S.M.'s safety; complete parenting education; maintain safe, appropriate, and stable housing; abide by the active restraining order; and participate in substance abuse assessment and services.

The court found that the ICWA did not apply based on the documents filed with the court.

E. Six and Twelve-Month Status Review Report

On June 25, 2014, the Department filed a status report recommending that father and mother continue to receive reunification services. The parents had been informed that the Department would work with them as a unit, offer them counseling services, and assist in developing a domestic violence relapse plan, but the parents needed to address their contact with each other instead of hiding it.

Mother claimed she had completed a parenting class through the Women's Center and faxed verification of her participation in domestic violence services. Her visits with S.M., however, were unpredictable and inconsistent.

Father failed to visit S.M. in February and March 2014, but thereafter complied with weekly supervised visits. He completed 14 out of 52 sessions of a domestic violence counseling program. He also completed a few parenting class sessions. However, he placed himself on a leave of absence from a chemical dependency program,

completed only four NA/AA support group meetings despite having been ordered to complete three to four meetings per week, and continued to deny any issues with alcohol.

F. Addendum Status Review Report

On August 1, 2014, the Department filed an addendum report, advising that father had been arrested for another domestic violence altercation with mother after drinking. This altercation occurred despite the parents' representations that they were not spending time together. The Department later learned that father and mother had relocated to Solano County together and had changed the restraining order to a "peaceful contact" order.

G. Contested Six-Month, Twelve-Month, and Eighteen-Month Status Review

The combined six and twelve-month status review hearing was continued to November 17, 2014, and became an eighteen-month status review hearing as well. Accordingly, the Department changed its recommendation to propose the termination of reunification services.

1. Social Worker's Testimony

Social worker Jesus Naranjo opined that the successful completion of a case plan required actual behavioral change. According to Naranjo, the parents had not modified their behavior with respect to domestic violence. Father was discharged from his domestic violence program. Contrary to the Department's repeated instruction, mother allowed him to visit with her and S.M. And after the parents engaged in yet another domestic violence altercation, they married.

Nor had the parents adequately addressed other issues. Although the parents were referred to a joint parenting program, they participated for only three sessions and did not complete the program. The parents' issues with alcohol had not been resolved, as mother acknowledged being intoxicated on several occasions between September 23, 2014, and October 20, 2014. The social worker was also concerned that the parents had stopped visiting S.M.

Two or three months after they married, father and mother separated and father moved out of mother's home. Father reported that he was in Shasta County and no

longer wanted reunification services. The Department made visits available to him, but he failed to maintain contact with the Department. Mother reported that she had moved out of her home in Solano County and no longer had stable housing.

2. Court Orders

The juvenile court expressed serious concerns about S.M.'s safety with the parents. It also noted its concern about the parents' lack of candor and unaddressed issues regarding substance abuse and domestic violence. The court terminated reunification services, reduced visitation to one hour per month, and set a section 366.26 hearing for March 17, 2015.

H. Parents' Section 388 Petitions

On March 6, 2015, father and mother each filed a petition under section 388 to modify the November 2014 order terminating reunification services.

1. Petitions

Mother requested that her reunification services be reinstated, arguing that her circumstances had changed because she enrolled in counseling at Early Head Start and the Pregnancy Help Center, and reinstating reunification services was in S.M.'s best interest because mother had "developed a strong bond" with her.

Father requested additional reunification services or family maintenance services. He argued that his circumstances had changed because he participated in the Building Healthy Families Program with mother, attended domestic violence counseling, and internalized what he had learned, and his request was in S.M.'s best interests because he was committed to providing for S.M.'s safety and security.

The juvenile court set both petitions for a hearing.

2. Department's Opposition

The Department filed an opposition to the parents' section 388 petitions and a report for the section 366.26 hearing on March 16, 2015. The Department recommended that the court deny the section 388 petitions, terminate parental rights, and implement a permanent plan of adoption.

Social worker Maurice Shaw advised that father and mother still had not addressed the issues of domestic violence and substance abuse. Although the parents had provided documentation indicating their participation in domestic violence and substance abuse classes, the social worker checked with the Wellness Center and learned they had only attended one appointment. Father's substance abuse service provider reported that father appeared for an assessment on January 30, 2015, and attended substance abuse sessions on February 3 and 4, 2015, but did not show up for sessions the following week. In December 2014, father admitted that he continued to drink "here and there."

Also in December 2014, father and mother told the social worker that they were again living together in San Joaquin County and were unemployed, but they planned to move back to Solano County to look for work and be closer to S.M. Mother indicated that she was three months pregnant and intended to bring S.M. into the family after having the baby.

Father and mother had stopped visiting S.M. in October 2014 and did not begin visiting again until December 24, 2014. Thereafter, they visited once a month in January and February. While the visits were generally positive, the parents' lack of participation in services had not alleviated the risk that had brought S.M. into the dependency system.

The social worker further advised that S.M. was assessed as generally adoptable due to her age, disposition, and capacity to bond with adults. She had been in the maternal grandparents' care for over a year and looked to them when scared or in need. Her primary attachment and parental relationship was with the maternal grandparents, and they were committed to adopting her.

3. Department's Addendum

On April 27, 2015, the Department filed an addendum to its section 366.26 report. The Department advised that parents had begun parenting classes through the Pregnancy Help Center in January 2015. Father completed 27 out of 52 domestic violence classes, was terminated from the program in February 2015, and then re-entered the program. Neither parent participated in individual therapy, but started participating in couple's therapy though the Holt Counseling Center in February 2015. Father showed up only

once to the Wellness Center for substance abuse services, but in March 2015 he began attending another outpatient drug treatment program.

The Department noted that S.M. set "boundaries" with mother during visits, and after the visits she transitioned easily back to her maternal grandmother's care. The maternal grandmother reported that the parents had recently begun calling S.M. on the phone; mother would often ask her if she wanted to move back in with "mommy and daddy, or do you want to have dinner with mommy daddy at her home," and S.M. would reply, "no its too dark there."

I. Section 366.26 Hearing and Hearing on Section 388 Petitions

The combined section 366.26 and section 388 hearings were postponed until they commenced on June 24, 2015, and continued on July 21 and 22, 2015. The parties agreed that testimony regarding the section 388 petitions could be used as evidence in the section 366.26 hearing.

1. Mother's Testimony

Mother confirmed that she was married to father and lived with him in Stockton. She also admitted that her case plan included addressing issues of parenting, domestic violence, drug testing, and visitation, and she had not become serious about getting S.M. back until after reunification services had been terminated.

Mother testified that, after services were terminated, she and father began couple's counseling at Holt Counseling Center in February 2015. From these sessions, she learned that her anger and father's substance abuse triggered their domestic violence.

In March 2015, mother and father started weekly parenting classes at Holt Counseling Center. Mother attended about 10 of the classes and learned about parenting children as they got older, alternatives to physical discipline, and focusing on the positive things children did.

Mother also recently started individual therapy and anger management through the Holt Counseling Center. She had attended six anger management individual sessions and learned about the cycle of anger. When asked to describe the cycle, however, she

responded that there was a cycle and she "got that cycle down," but she never described what the cycle was.

The court received into evidence two letters from Holt Counseling Center, indicating that the parents had attended couples counseling since February 13, 2015, and had attended 19 sessions; mother had begun attending individual counseling on May 13, 2015, and had completed six sessions; parents attended 11 parenting classes since April 2015; and since April 2015, mother had attended six anger management classes before dropping out. The letters asserted that the parents had developed better coping skills and learned healthier communication techniques and parenting skills.

Mother further claimed that she had never consumed alcohol and that father had stopped drinking. She still did not understand why the Department had removed S.M. from her care.

Mother acknowledged that she did not visit S.M. at all for a five-week period before December 2014, and S.M. was not fully familiar with her because they saw each other only once a month. Nonetheless, she described her visits with S.M. as "breathtaking" and asserted her "only desire" was to reunify with S.M.

2. Father's Testimony

Father claimed that he stopped drinking in October 2014. For four months before the hearing, he attended a substance abuse program but could not recall what he shared. The program imposed random drug tests, and he had not been told he tested positive. He attended three AA meetings a week, but he was not sure which of the 12 steps he was on and did not yet have a sponsor.

Father corroborated mother's assertion that they began weekly parenting classes through the Holt Counseling Center; he said that in the class they "address situations," but he did not "have much to address."

Through his domestic violence program, father reported learning about "a cycle that needs to be broken" and the usefulness of "self control" and taking a "time-out" when a situation escalated. Father recognized that domestic violence could negatively

impact S.M. because she might grow up and be in similar situations, but he did not testify about more imminent physical or emotional risks to her.

Lastly, father testified that he enjoyed visits with S.M., but the visits were difficult because she could be "all over the place" and he was "not sure what it is that she's doing" when "she's always just wilding out."

3. Social Worker's Testimony

Social worker Maurice Shaw, qualified as an expert in child welfare, acknowledged father's and mother's recent participation in services but opined that they had not established a sufficient change of circumstances.

Shaw recounted that he met with father and mother on December 24, 2014, and although the parents had reported they were engaged in services, they had no documentation and, as it turned out, they were not actually involved in services until later.

As to the issue of domestic violence, father had not completed his 52-week program and he lacked sufficient understanding of the domestic violence cycle. When Shaw questioned father about the cycle, father replied that it was a "box," but he had to look at the materials that he had received in the program. Father had not clearly communicated an understanding of the triggers for him and for mother, and he lacked a solid understanding of the effects of domestic violence on S.M. Mother's initial domestic violence safety plan omitted concrete steps and, even at the time of the hearing, was inadequate.

In regard to the parents' substance abuse, mother's testimony that she never drank was inconsistent with her history. In light of mother's pattern of dishonesty with the Department concerning her relationship with father, Shaw questioned whether she would be forthright with social workers if the court ordered additional services. Although father reported a clean and sober date of October 2014, he could not recall a specific date or state which of the 12 steps of AA he was working on. In Shaw's experience, people are typically proud of their clean and sober date and AA meetings are step-driven. And when Shaw spoke with father on December 24, 2014, father had not stated that he had quit

drinking, but to the contrary reported that he still drank "here and there" with his cousins. Father's substance abuse program tested him only on Tuesdays and Thursdays, allowing father to plan his drinking around those days.

In regard to visitation, Shaw acknowledged that visits between S.M. and her parents were appropriate overall, and the parents made an effort to call her regularly. Because of S.M.'s developmental stage, however, the visits needed to be child-driven, and the parents had not demonstrated an ability to rethink visits when she misbehaved or distract her or re-engage her in activities she liked. Father's confusion over her "wilding out" supported Shaw's opinion that father lacked a full understanding of her developmental stage and what behaviors she would display. At times, mother was "all about herself" during visits, and she antagonized S.M., called her names, and prolonged the end of the visits, which could be draining and confusing for the child.

Based on Shaw's conversations with the parents, they still did not have a full understanding of why S.M. was removed.

Shaw further testified that S.M. had been with her maternal grandparents for 25 months out of her three years, she was bonded with them, they displayed healthy parenting, and they were committed to adopting her.

4. Juvenile Court's Rulings

The court denied the parents' section 388 petitions, concluding they had not established either a change of circumstances or that their requested relief would be in S.M.'s best interests. Despite three days of testimony, it remained unclear what the parents had actually done, in what services they actually participated, and to what extent they participated. In addition, the court found that father and mother lacked credibility, noting they had been untruthful with both the court and the social worker. Specifically, neither parent's representations about alcohol was credible. Nor did father or mother seem able to describe with any real understanding what they had learned in their classes. As to S.M.'s best interests, the court found that S.M. had been out of her parents' care for over two years, she had a strong bond with her maternal grandparents, and her greatest need was permanence and stability.

As to the section 366.26 hearing, the court found by clear and convincing evidence that S.M. was adoptable and none of the statutory exceptions to the termination of parental rights applied. The court further found that adoption would be S.M.'s permanent plan and terminated father's and mother's parental rights.

Father filed a notice of appeal from the denial of reinstatement of reunification services and termination of parental rights. Mother filed a notice of appeal from the "Contested 366.26 Hearings."

II. DISCUSSION

A. ICWA

The ICWA requires that, where the juvenile court knows or has reason to know that an Indian child is involved, the Department shall notify the Indian child's tribe of the pending proceedings and its right of intervention. (25 U.S.C. § 1912(a); Cal. Rules of Court, rule 5.481.)

Notice to the tribe shall be sent by registered or certified mail with return receipt requested, and the notice shall be to the tribal chairperson unless the tribe has designated another agent for service. (§ 224.2, subds. (a)(1), (a)(2).) If the identity or location of the tribe cannot be determined, the same procedure should be used with respect to notice to the BIA. (*In re Marinna J.* (2001) 90 Cal.App.4th 731, 739–740 fn. 4.) The ICWA notice, return receipts, and responses of the BIA and the tribes must be filed with the juvenile court. (§ 224.2, subd. (c); see Cal. Rules of Court, rule 5.482(a)(1); *In re Louis S.* (2004) 117 Cal.App.4th 622, 629.) No foster care placement or termination of parental rights proceeding shall be held until at least 10 days after receipt of notice by the parent or Indian custodian and the tribe or BIA. (25 U.S.C. § 1912(a); § 224.2, subd. (d); Cal. Rules of Court, rule 5.482(a)(1); *In re Desiree F.* (2000) 83 Cal.App.4th 460, 465.)

As set forth ante, the Department sent notices to the BIA and to the tribes either indicated by mother or discovered by the Department during its investigation, and it timely filed the ICWA compliance documents with the court. Father contends, however, that the Department's notices to the tribes (except for the Blackfeet Tribe) were

inadequate, because they were not addressed to the specific individual listed as the contact person for ICWA purposes in the Federal Register.

Specifically, in regard to the Hoopa Valley Tribe, the Department sent notice to "ICWA Program, Director of Social Services" at P.O. Box 1267 Hoopa, California 95546. According to the Federal Register, the Designated Tribal Agent was "Hoopa Valley Tribe, Millie Grant—Director Human Services," at P.O. Box 1267, Hoopa, California 95546.[3] In regard to the Colorado River Tribe, the Department sent notice to "ICWA Representative" at 12302 Kennedy Drive, Parker, Arizona 85344. According to the Federal Register, the Designated Tribal Agent was "Colorado River Indian Tribes, Daniel L. Barbara, M.ed., Executive Director, Department of Health & Social Services" at 12302 Kennedy Drive, Parker, Arizona 85344.

In regard to the Hopi Tribe, the Department sent notice to "Hopi Tribal Council, ICWA Representative" at P.O. Box 123, Kykotsmovi, Arizona 86039. It also served notice to "Hopi Tribal Council, ICWA Representative" at P.O. Box 68, Second Mesa, Arizona 86043. According to the Federal Register, the Designated Tribal Agent was "The Hopi Tribe, Loren Sekayumptewa, MSW, Ph.D. (ABD), Director of Social & Behavioral Health Services" at P.O. Box 68, Second Mesa, Arizona 86043.

We review the court's finding that proper ICWA notice was given for substantial evidence. (*In re N.M.* (2008) 161 Cal.App.4th 253, 268.)

Based on the record, substantial evidence supports the conclusion that the notice to the tribes was adequate. In essence, the Department sent notices to the "ICWA Representative" or the "ICWA Program, Director of Social Services" of the tribes at their correct street or post office address. The Department received and filed return receipts from all the tribes (and the BIA), confirming the notices had been received at those locations. It is reasonable to conclude that correspondence addressed to the "ICWA

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[3] As authority for the identity of the designated tribal agents, father directs us to a notice by the BIA of August 1, 2012, cited at 77 Federal Register 45815, which is available at https://www.federalregister.gov/articles/2012/08/01/2012-18594/indian-child-welfare-act-designated-tribal-agents-for-service-of-notice.

Representative" or the "ICWA Program" at the correct address was delivered to the tribe's ICWA Representative—that is, the tribal agent for ICWA purposes—whether or not the person was identified by name. (See *In re N.M.*, *supra,* 161 Cal.App.4th at p. 268 ["[r]equiring literal compliance solely by reference to the names and addresses listed in the last published Federal Register would exalt form over substance;" the juvenile court must determine "as a matter of fact from all the circumstances whether appropriate notice has been given"].)

Father also suggests the Department should have submitted return receipts from the tribes verifying that the notices reached *the proper agent* for the tribe. But section 224.2, subdivision (c) contains no such requirement; instead, it states that "all return receipts and responses received, shall be filed with the court in advance of the hearing." The Department complied with this provision. Father fails to establish error on this ground.

B. Order Denying Section 388 Petitions

Under section 388, subdivision (a), a parent may, "upon grounds of change of circumstance or new evidence, petition the court . . . for a hearing to change, modify, or set aside any order of court previously made." (§ 388, subd. (a)(1).)

To obtain relief under section 388, father and mother had the burden of showing (1) a change of circumstance or new evidence and (2) their proposed modification of the prior order would be in S.M.'s best interests. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 316–317; *In re G. B.* (2014) 227 Cal.App.4th 1147, 1157; *In re B.D.* (2008) 159 Cal.App. 4th 1218, 1228.)

Mother contends her circumstances had changed in that she "took aggressive action to address their domestic violence problem." Father contends his circumstances had changed in that his "self-awareness reached an unprecedented plateau." Both parents urge that their bond with S.M. made further reunification services in S.M.'s best interests.

We review the juvenile court's ruling for an abuse of discretion. (*In re Shirley K.* (2006) 140 Cal.App.4th 65, 71.)[4]

1. Changed Circumstances

A change in circumstances for purposes of section 388 must relate to the purpose of the order at issue in the petition and indicate that the problem initially bringing the child into the dependency system has been removed or ameliorated. (*In re A.A.* (2012) 203 Cal.App.4th 597, 612.)

Here, S.M. had been removed from her parents' custody due to mother's and father's domestic violence and father's substance abuse. The case plans addressed the issues of domestic violence and *both* parents' substance abuse. When the juvenile court terminated reunification services in November 2014, it specifically cited mother's and father's "lack of candor and honesty" with the Department and their "significant" lack of cooperation, as well as the fact that "there remain unaddressed issues out there relating to substance abuse and domestic violence."

Although father and mother participated in a number of services *after* reunification services were terminated—and had made some progress—ample evidence supported the conclusion that the serious problems that had led to S.M.'s removal had not been cured or ameliorated, and the fundamental circumstances underlying the order terminating reunification services had not changed.

For example, despite mother's participation in services, at the section 388 hearing she testified that she still did not understand why the Department had removed S.M. Both parents displayed a lack of understanding of the seriousness of the domestic violence issue; father did not articulate how exposing S.M. to domestic violence placed her at immediate, significant physical risk of harm. Neither parent described meaningful

[4] Mother's notice of appeal did not specify that she was appealing from the denial of her section 388 petition, but stated she was appealing from the "Contested 366.26 Hearings." However, since the section 388 petition was decided at the same hearing, and since the section 366.26 order might be reversible if the denial of the section 388 petition were erroneous, we have jurisdiction to consider mother's argument.

insight as to the cycle of violence: when the social worker asked father what it was, he tried to find the answer in his program materials, and he could not identify what might trigger him or mother; mother indicated she had learned about the "cycle of anger" but did not describe it when asked. And when requested to describe her domestic violence safety plan, mother replied she was not "too concerned" about it.

As to the substance abuse issues, the court found that the parents' testimony concerning their freedom from alcohol use was simply not credible. We defer to the juvenile court's credibility assessment. (See *In re T.V.* (2013) 217 Cal.App.4th 126, 133.) Furthermore, the record amply supports the court's finding. While mother maintained that she never drank, the social worker had observed jugs of wine under mother's kitchen sink and in her refrigerator, the social worker learned that mother had been denied transportation to a domestic violence shelter because she was intoxicated, mother acknowledged drinking when receiving reunification services, and the Thursday before the 18-month status review hearing she called the social worker intoxicated, slurring her words. Although father claimed he was clean and sober as of October 2014, he had admitted to the social worker on December 24, 2014, that he still "drank here and there," and at the section 388 hearing he could not remember his exact clean and sober date or what step he was working on at AA.

Father's reliance on *In re Aljamie D.* (2000) 84 Cal.App.4th 424 is misplaced. There, the appellate court reversed a *summary* denial of a mother's section 388 petition, where the mother had *two years* of *documented* sobriety, had completed her *entire* case plan, had *regularly visited* her children and had *unsupervised* visitation, had a parent-child relationship through actually living with them, and the children *wanted* to live with her. (*Id.* at pp. 427–428.) Here, father and mother had a hearing on their section 388 petition, yet failed to provide any evidence akin to what was produced by the mother in *In re Aljamie D.*

In short, the parents' "last-minute change of heart during the last brief months of a long saga of poor choices, inappropriate behavior and refusals to care for [their child] is

not compelling evidence of a 'legitimate,' 'genuine,' or 'lasting' change of circumstances." (*In re Aaliyah R.* (2006) 136 Cal.App.4th 437, 447–448.)

2. Best Interests

Substantial evidence supports the conclusion that it would not be in S.M.'s best interests to provide further reunification services to mother or father, or to wait to see whether S.M. could ever be safely returned to her parents' care rather than working towards an adoptive placement.

During the reunification period, the parents' issues affected S.M. negatively. A reasonable inference from the evidence is that even the services in which the parents started to engage, after the reunification period, had not increased their ability to care for S.M. Nor is it clear, given their history, that the parents will continue to engage in those services.

Father and mother claim they have a bond with S.M. and insist she might suffer emotional trauma from being separated from her biological family. But the evidence at the hearing was that S.M. had lived with her maternal grandmother for 25 months out of her 40 months, and she had been in mother's care for only 13 months. There were long periods of time in which mother or father failed to visit S.M., and the visits were typically supervised and lasted only one hour a month. Indeed, mother admitted that S.M. is not fully familiar with her. After visits with her parents, S.M. returned easily to her maternal grandmother's care, and S.M. looked to the maternal grandmother for her needs. S.M. never expressed a desire to live with her parents; to the contrary, she stated she did not want to live with them.

We do not simply compare the household and upbringing offered by the biological parents with that of the maternal grandmother, but consider the seriousness of the problems that led to the dependency, the parents' lack of significant progress in ameliorating the problems, the lack of any significant change in circumstances since the denial of reunification services, and the bond S.M. had established with the maternal grandmother as compared to the parents. (See *In re Kimberly F.* (1997) 56 Cal.App.4th 519, 529–532.) Moreover, at this stage of the proceedings, the minor's interest in

permanency and stability is paramount. (*In re J. C.* (2014) 226 Cal.App.4th 503, 527 ["after reunification efforts have terminated, the court's focus shifts from family reunification toward promoting the child's needs for permanency and stability," and "a parent's petition for either an order returning custody or reopening reunification efforts must establish how such a change will advance the child's need for permanency and stability"]; *In re Stephanie M., supra,* 7 Cal.4th at p. 317; *In re G.B., supra,* 227 Cal. App. 4th at p. 1163 ["Once reunification services are terminated . . . the focus of the proceedings changes from family reunification to the child's interest in permanence and stability."].) Granting a section 388 petition that would result in delaying the selection of a permanent placement for the child "to see if a parent, who has repeatedly failed to reunify with the child, might be able to reunify at some future point, does not promote stability for the child or the child's best interests." (*In re Casey D.* (1999) 70 Cal.App.4th 38, 47.) Father and mother have failed to demonstrate an abuse of discretion.

III. DISPOSITION

The orders are affirmed.

NEEDHAM, J.

We concur.

SIMONS, ACTING P.J.

BRUINIERS, J.